



**PacifiCorp Environmental
Remediation Company**

April 20, 2006

Phase I Municipal Stormwater Permit Comments
Washington Department of Ecology
Water Quality Program
P.O. Box 47696
Olympia, WA 98504-7696

Department of Ecology
Water Quality Program
APR 24 2006

Washington Department of Ecology,

On behalf of PacifiCorp and Puget Sound Energy (referred to as the "Utilities"), PacifiCorp Environmental Remediation Company (PERCo) submits the following comments on the draft Phase I Municipal Stormwater NPDES and State Waste Discharge General Permit dated February 15, 2006. The Utilities will likely send additional comments before the close of the comment period.

As explained below, the Utilities request that the Washington Department of Ecology (Ecology) revise the draft permit to prohibit stormwater discharges by the City of Tacoma that violate Sediment Quality Objectives (SQOs) mandated by the United States Environmental Protection Agency (EPA) in the Thea Foss and Wheeler-Osgood Waterways (referred to as the "Thea Foss Waterway"). The City of Tacoma's stormwater discharges are recontaminating sediments in the Thea Foss Waterway at levels exceeding the SQOs, and the Utilities wish to ensure that the draft Phase I Municipal Stormwater permit does not shield the City of Tacoma from its responsibilities under CERCLA and the May 2003 Consent Decree with EPA to address contaminated sediments in the Thea Foss Waterway.

Background

The Thea Foss Waterway is a part of the Commencement Bay-Nearshore/Tideflats Superfund site. EPA has ordered certain parties, including the Utilities and the City of Tacoma, to investigate and remediate sediment contamination in the Thea Foss Waterway and to meet the SQOs applicable to the Thea Foss Waterway. Investigation began more than 15 years ago, and the remedial action is nearly complete. The Utilities took responsibility for remediating the Head of the Waterway (area south of waterway station 70+10); the City of Tacoma took responsibility for remediating the rest of the Thea Foss Waterway. The components of the sediment remedial activities along the Waterway included complete removal of contaminated sediments; partial removal of contaminated sediments and placement of a thick cap; placement of a hybrid cap to halt DNAPL seepage from the SR509 seep; placement of a thick cap over

contaminated sediments; natural recovery; and long-term monitoring. The cost of investigation and remediation of the Thea Foss Waterway has exceeded \$100 million

Issue of Concern – The City of Tacoma’s Stormwater is a Source of Top Down Sediment Recontamination

In order to ensure that the remediation would permanently address contamination in the Thea Foss Waterway, EPA’s May 2003 Consent Decree with the City of Tacoma required the City to perform source control measures to prevent stormwater from recontaminating sediment in the Thea Foss Waterway. The Utilities and the City are required to assess whether the remediated sediments are being recontaminated, and if so whether through “bottom up” or “top down” contamination. The Utilities and the City are required to collect sediment samples on an annual basis in accordance with their respective sediment monitoring programs referred to as Operation, Maintenance, and Monitoring Plans (OMMP). The Utilities completed their remedy of the Thea Foss Waterway in February 2004. Since then, the Utilities have collected two rounds of OMMP samples in the Utilities’ work area, the head of the Thea Foss Waterway. Additional sediment samples have also been collected in the Utilities work area in connection with the City’s recontamination of a portion of the Utilities’ cap by nearby dredging activities.

Results from sediment samples collected from 0 to 10 cm in the Head of the Waterway indicate that bis(2-ethylhexyl)phthalate (BEHP) is present at concentrations exceeding its SQO of 1,300 ug/kg in most of the Utilities work area and that concentrations are continuing to increase over time. For example, at sample location WC-08, BEHP concentrations increased from 220 ug/kg in May 2005 to 2,400 ug/kg in December 2005. At sample location WC-09, BEHP concentrations increased from 289 ug/kg in May 2005 to 1,600 ug/kg in December 2005. Levels of total heavy polycyclic aromatic hydrocarbons (HPAHs) have also been steadily increasing since the baseline monitoring program was conducted in April 2004. These data indicate that the City of Tacoma’s stormwater discharges are recontaminating sediment in the Thea Foss Waterway that were below relevant SQOs following completion of the Utilities’ remedy in February 2004.

The Utilities want to ensure that the revised Phase I Municipal Stormwater permit is consistent with the City of Tacoma’s responsibilities under CERCLA and the May 2003 Consent Decree with EPA to address contaminated sediments in the Thea Foss Waterway. Additional requirements must be added to Ecology’s draft Phase I Municipal Stormwater NPDES and State Waste Discharge General Permit to prevent further recontamination of the sediments in the Thea Foss Waterway. For example, the City of Tacoma’s current municipal stormwater permit¹ included Special Condition S12 (“Thea Foss Waterway Basin Program”) that applied only to the City of Tacoma and required it to prepare and implement a stormwater management program to reduce its impacts on the Thea Foss Waterway. Additionally, the City of Tacoma’s May 2003 Consent Decree with EPA obligated the City to perform source control pursuant to a Stormwater Work Plan Addendum to prevent recontamination of Thea Foss sediments.

Ecology’s draft Phase I Municipal Stormwater NPDES and State Waste Discharge General Permit dated February 15, 2006 proposes terms that are helpful, but not sufficient, to prevent further recontamination of sediments in the Thea Foss Waterway. For example, draft permit

¹ This permit, effective August 4, 1995, is titled “National Pollutant Discharge Elimination System and State Waste Discharge General Permit for discharges from municipal separate storm sewers for the South Puget Sound Water Quality Management Area.”

condition S4.B states that the permit would not authorize stormwater discharges that violate Washington sediment management standards. These sediment management standards, however, are not the only legally required cleanup standards for the Thea Foss Waterway. EPA has extensively investigated the Thea Foss Waterway and other areas of the Commencement Bay-Nearshore/Tideflats Superfund site and determined that the SQOs must be met in order to protect human health and the environment in the Thea Foss Waterway. The sediment management standards may be in some instances less stringent than the SQOs. The Utilities are concerned that the draft terms would authorize violations of the SQOs that EPA has determined to be necessary to protect human health and the environment in the Thea Foss Waterway. Even when the Washington sediment management standards may be equivalent or more stringent than the SQOs, the Utilities want to prevent the possibility that the draft terms would as a legal matter authorize a violation of SQOs and thereby shield the City of Tacoma from its responsibilities under CERCLA and the May 2003 Consent Decree with EPA to address contaminated sediments in the Thea Foss Waterway. Due to the significant time and resources expended to investigate and remediate the Thea Foss Waterway to date, it is essential that the draft Phase I Municipal Stormwater permit clearly negate this possibility.

Requested Changes to the Draft Permit

The Utilities request the following changes to the draft permit:

1. The Utilities request that Ecology modify the draft permit condition S4.B by adding the following underlined terms and deleting the following stricken terms:

S4. COMPLIANCE WITH STANDARDS

B This permit does not authorize a violation of Washington State surface water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), sediment management standards (chapter 173-204 WAC), or human health-based criteria in the national Toxics Rule (Federal Register, Vol. 57, NO. 246, Dec. 22, 1992, pages 60848-60923), or other applicable water quality or sediment standards or requirements derived from federal or state law, regulations, decrees, or enforceable agreements. This includes Sediment Quality Objectives applicable to the Thea Foss and Wheeler-Osgood waterways and approved by the United States Environmental Protection Agency for the Commencement Bay-Nearshore/Tideflats Superfund site in its September 30, 1989 Record of Decision and any applicable Explanations of Significant Differences.

2. The Utilities request that Ecology modify the draft permit's definition of "Water Quality Standard" in the Definitions and Acronyms Section of the draft Permit by adding the following underlined terms and deleting the following stricken terms:

"Water Quality Standards" means Surface Water Quality Standards, Chapter 173-201A WAC, Ground Water Quality Standards, Chapter 173-200 WAC, and Sediment Management Standards, Chapter 173-204 WAC, or other applicable water quality or sediment standards or requirements derived from federal or state law, regulations, decrees or enforceable agreements. This includes Sediment Quality Objectives applicable to the Thea Foss and Wheeler-Osgood waterways and approved by the United States Environmental Protection Agency for the Commencement Bay-

Nearshore/Tideflats Superfund site in its September 30, 1989 Record of Decision and Explanations of Significant Differences.

3. Section S5.C.6.a addresses the issue of Structural Stormwater Controls and indicates that an SWMP shall include a program to construct structural stormwater controls to address impacts to "beneficial uses" resulting from disturbances to watershed hydrology and stormwater pollutant discharges.
 - The definition of "beneficial uses" is not clear in the draft permit. We recommend that the permit include guidance on when structural stormwater controls are required.
 - The permit should clearly state that an exceedance of a water quality standard (including SQOs and Sediment Management Standards) is an impact to a Waterway's beneficial use.
 - The second paragraph under S5.C.6.a. should also include a reference to facilities that may be required to trap and collect contaminated particulates.
4. There are several references to the protection of water quality throughout the permit. The Utilities recommend that the permit include language regarding the protection of sediment quality in each of these locations: S5.B (1st paragraph); S5.C. 5.b.ii., S5.C.7.b.i (2nd paragraph), S5.C.10.b.ii.(3), (4), (7), and (8). Alternatively, Ecology could include a definition of water quality within the permit that specifically references the protection of sediment quality.

Thank you for the opportunity to comment on this draft permit. If you have any questions on these comments, please do not hesitate to contact me at 503-813-5036.

Sincerely,



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Utilities Project Coordinator

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